



State of Utah

Department of Natural Resources

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Executive Director

Division of Oil, Gas & Mining

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Lieutenant Governor

August 8, 2006

CERTIFIED MAIL
7004 2510 0004 1824 7845

Cutis Larkin
Gypsum Resources Development, Inc
1947 North 2050 East
Layton, Utah 84040

Subject: Findings of Fact, Conclusions and Order for MN-2006-03-01-01, White Cap Mine,
Emery County, Utah

Dear Mr. Larkin:

On March 28, 2006, an Informal Conference was held to review the fact of violation for state violation MN- 2006-03-01-01. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the attached documents shall constitute the findings of fact, conclusions, order, and finalized assessment.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed below.

Sincerely,

Mary Ann Wright
Associate Director, Mining
Assessment Conference Officer

Enclosures:

Findings
Final Assessment

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BEFORE THE DIVISION OF OIL, GAS AND MINING
MINERALS REGULATORY PROGRAM
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE White	:	INFORMAL CONFERENCE
Cap Mine, Emery COUNTY, UTAH		For MC – 2006-03-01-01
	:	FINDINGS, CONCLUSIONS
		AND ORDER
		CAUSE NO. S/015/047

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On March 28, 2006, the Division of Oil, Gas and Mining ("OGM") held an informal conference concerning the Fact of Violation and the Assessment for Violation Notice, MN-2006-03-01-01 issued to the White Cap Mine, Emery County, Utah. The following individuals attended: Paul Baker and Daron Haddock for the Division.

Presiding: Mary Ann Wright
Associate Director, Mining
Division of Oil, Gas and Mining

Petitioner: Curtis Larkin, Gypsum Resource Development

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner and the Division in connection with this informal conference, and on information in the files of the Division.

FACTS PRESENTED: Fact of the Violation

On March 28, 2006, the Division of Oil, Gas and Mining (OGM or Division) held an Informal Conference concerning the White Cap Mine, S015/047 located in Emery County, Utah.

1. Violation MN-2006-03-01-10 was issued 2/03/06 for 'Failure to Notify the Division of a suspension period greater than 5 years and Failure to reclaim the mine after being required to do so by the division.'
2. In a communication dated March 14, 2006, Mr. Larkin requested an Informal Conference. Notice of the informal conference was properly given. Pursuant to Utah

Code Ann. Section 40-8- 9 and Utah Administrative Rule R647-6-102, an informal conference in the matter was held on March 28, 2006. At the informal conference, the Petitioner presented the following information to the Conference Officer.

3. Mr. Larkin stated he was the sole remaining member of GRD. He also explained that this was his first opportunity to have control of the mine since he did not control the minerals, only the permit. In 1989, Cannon Industries spent \$385,000 on the road that leads to the mine and another \$60-70,000 on drilling. The original venture of was with GA Pacific to make wallboard at the Hunter Power plant, using flue gas desulphurization in the process. They built a warehouse, etc. where they could screen, mill and crush in Huntington, UT. In 1993, GA Pacific opted out of the deal and an SMO application to mine 3,000 tons was made to the Division. Some mined product was taken to Inkom, ID. In 1996-97, the mining leases were terminated on claims held by Clark Powell, who insisted on leaving the site open and ready for development. GRD proposed that Powell take over the permit, but Powell would not assume that responsibility and yet Powell prohibited GRD from reclaiming the site.
4. Mr. Larkin admitted to having some confusion between having the claims and having the permit. GRD has a \$10,000 bond with Emery County and BLM. In 1998, Mr. Larkin acquired GRD. The site is BLM surface, and BLM mineral. Mr. Larkin has explored every aspect of economic development. The mining claims have now lapsed.
5. Paul Baker of the Division stated that the Notice (to mine) with the BLM had expired in November 2003 and BLM ordered GRD to reclaim. Mr. Baker inspected the site in 2001 and again in 2002 and found that the site was not active. OGM rules require reclamation after 10 years suspension. OGM sent a letter to GRD requiring reclamation by January 1, 2006.
6. Paul Baker met in mid-January with BLM on site and an extension was given Feb 3, 2006 to reclaim the site by March 14, 2006. Mr. Larkin of GRD wanted an extension until November 2006. Tony Gallegos of the Division measured the site disturbance at 4.55 acres. GRD has not paid permit fees since November, 2001.
7. Mr. Larkin was offered a choice of either 1) filing for an appeal to the Board to approve an extended suspension period beyond 10 years or, 2) beginning reclamation immediately. If he chose the former option, he was required to file with the Board by April 15, 2006.

FINDINGS and CONCLUSIONS:

- Mining was suspended for more than 10 years. Reclamation was required by state rule to occur. The time period for suspension was exceeded. The Fact of the Violation

(Cessation Order) should stand.

- The Division cannot extend the suspension period.
- Only the Board can grant that extension, so the matter is rightly turned over to the Board.
- Mr. Larkin was given a choice of either filing for an appeal to the Board to approve an extended suspension period beyond 10 years or of beginning reclamation immediately. Mr. Larkin filed with the Board by April 15, 2006.
- At its May 24, 2006 hearing, the Board granted Mr. Larkin of GRD, the requested extension to the 10-year suspension period. This became a written Order of the Board on June 22, 2006.

ORDER

NOW THEREFORE, it is ordered that:

1. Cessation Order MC-2006-04-02, issued 02-03-06, is hereby affirmed.
2. The final assessment, issued by the Assessment Officer is shown in the attached worksheet.
3. A fine of \$ 330.00 is assessed and payable 30 days from receipt of this re-assessment.

SO DETERMINED AND ORDERED this 7th day of August, 2006

Mary Ann Wright, Associate Director, Mining
Conference Officer
Division of Oil, Gas and Mining
State of Utah

WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Gypsum Resource Development, Inc./ White Cap #8 PERMIT S/015/047

NOV / CO # MN-2006-03-01(1)

VIOLATION 1 of 1

REASSESSMENT DATE August 1, 2006

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
Environmental harm and injury to the public from an unreclaimed mine site.

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to reclaim a mine site after 5 years of continued suspension. Leaving a site unreclaimed, increases the likelihood of sedimentation, fugitive dust, and danger to the public. The inspector indicated that some fugitive dust has already left the site and there is some likelihood of continued damage, if the site is left abandoned. Without reclamation it is likely that environmental harm will ensue. At this point it appears that there is more potential than actual harm, therefore I am assessing points in the low end of the "Likely" category. No change in this category from the proposed assessment*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that there is mainly potential for damage due to the unreclaimed nature of the site. He did indicate that there was some damage to air quality as a result of fugitive dust. This damage is considered temporary and the site could be reclaimed. Damage is assessed in the lower part of the range. No change in this category from the proposed assessment.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 15

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

******* *The proposed assessment had 8 points in this category. I am reducing the points to 5 because of the information provided in the informal conference. Mr. Larkin explained that he had little control of the leases, which were held by Clark Powell until December 31, 2005 when the claims expired. Mr. Larkin is the sole remaining member of GRD and until just recently did not have control of the mining claims. It is understandable that there could be some confusion regarding the rights of the permittee versus the rights of the claim holder, but little action was taken by the permittee to resolve this situation until DOGM forced the issue. The BLM also notified GRD that reclamation was required and no action was taken. This indicates some indifference to the rules or lack of reasonable care. Points are assessed in the lower end of the negligence range.*

GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS -5

PROVIDE AN EXPLANATION OF POINTS:

*** *This was considered to be a difficult abatement because it required the filing of various paperwork, including amending the reclamation surety. Termination of the violation was completed on June 23, 2006. Although this was an extended abatement, the Permittee was proactive in completing the requirements and had secured extensions of the abatement when needed. The abatement was ultimately extended to June 23, 2006 and the requirements satisfied on that date. Because of the involvement of the Permittee and the difficulty of the abatement, good faith points are awarded in the amount of 5 points.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MN-06-03-01(1)</u>	
I.	TOTAL HISTORY POINTS <u>0</u>
II.	TOTAL SERIOUSNESS POINTS <u>15</u>
III.	TOTAL NEGLIGENCE POINTS <u>5</u>
IV.	TOTAL GOOD FAITH POINTS <u>- 5</u>
	TOTAL ASSESSED POINTS <u>15</u>

TOTAL ASSESSED FINE \$ 330